

MARTHA CHARLIE

IBLA 76-64

Decided October 30, 1975

Appeal from decision of Fairbanks, Alaska, District Office, Bureau of Land Management rejecting, in part, native allotment application.

Appeal dismissed.

1. Rules of Practice: Appeals: Dismissal

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal, and the notice, though filed within the 10-day grace period, was not transmitted within the 30-day period following service of the decision.

APPEARANCES: E. John Athens, Jr., Esq., Alaska Legal Services Corp., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Martha Charlie appeals from the April 10, 1975, decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), rejecting, in part, her application for a native allotment pursuant to the Alaska Native Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, formerly codified as 43 U.S.C. § 270-1 to 270-3 (1970), repealed by Section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp. III, 1973). However, her notice of appeal was not filed until May 19, 1975, and could not have been transmitted prior to May 16, 1975.

[1] The appropriate regulations, 43 CFR 4.401 and 43 CFR 4.411, require that a notice of appeal be filed within 30 days of receipt of an adverse decision. A 10-day grace period is provided for appeals which are received within 10 days of the required period and which appear to have been transmitted within the 30-day period for filing

notices. Those provisions are mandatory and failure to comply with those requirements will result in the summary dismissal of the appeal, as the regulatory requirements are jurisdictional in nature. In this case, appellant received the decision appealed from on April 11, 1975. The notice of appeal is dated May 16, 1975, and was received on May 19, 1975. Since the appeal obviously was not transmitted until more than 30 days after receipt of the decision, this Board has no jurisdiction to entertain the appeal. Elbert F. Howey, 15 IBLA 208 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Edward W. Stuebing  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Douglas E. Henriques  
Administrative Judge

